

IN THE HIGH COURT OF THE STATE OF TRAVANCORE-COCHIN AT KERALA.

Present:-

The Hon'ble Shri K.T. Koshi, Chief Justice  
and  
The Hon'ble Shri P.D. Mandam Menon, Judge.

A.S. No. 19 of 1954.

O.S.No. 75 of 1118 on the file of the District Court, Kottayam,  
pending execution in the Temp. Addl. District Court, Parur.

Appellant:- 8th defendant.

Peerubava Ibrahim of Kuchikattil, Udumbanoor Muz, Karimnagar  
Pakuthy, Thodupuzha Taluk.

By Advocate Shri K.D. Parasadaswami Karthickar.

Respondents:- Assignee Decree-holder, Original decree-holder and  
defendants 1, 3 to 7, 9 and 10.

1. Chacko Joseph, Parakkalathu, Pannoor Muz, Karimnagar  
Pakuthy, Thodupuzha Taluk.
2. Removed off from the array.
3. Avira Ouseph of Kottoor, Udumbanoor Muz, Karimnagar  
Pakuthy, Thodupuzha Taluk. (died).
4. Makkaru Pariveth of Kothattathil, do. do.
5. Avira Chacko of Kottoor, do. do.
6. Ouseph Anna of do. do.
7. Ouseph Agasthy alias Kunjikutty of do.
8. Ouseph Sosa residing in Sankaramkulathu, do.
9. Sankara Pillai Ariyana Pillai of Pechikattil, Udumbanoor  
Muz, Karimnagar Pakuthy.
10. Ouseph Kuriacko of Kottaparambil, do. do.

3rd Respondent died legal heirs:-

11. Ouseph Abraham of Kottoor Udumbanoor Muz, Karimnagar  
Pakuthy.
12. Ouseph Joseph of do.
13. Ouseph Jacob of do.
14. Ouseph Mathew of do.
15. Ouseph Kurian of do. (Minor).
16. Ouseph Thomas of do. (Minor).

Guardian of minor respondents 15 and 16 is their mother, 6th  
respondent, Ouseph Anna - Cause title is amended as per order  
on C.M.P. 643/55 dated 22-9-1955.

By Advocate Shri M.P. Varghese for Respondent 1.

This Appeal Suit having been finally heard on 18-10-1955, this  
court on the same day delivered the following:-

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JUDGE BENT.

Of the two points raised in the appeal the complaint that the lower court's order contravenes the provisions of the decree that item 4 should be sold last has no substance. There is now only a direction to proclaim items 4, 8 and 9, and that does not mean the order for sale prescribed by the decree will not be observed.

As for the discharge of Rs. 700/- as per Ext. II we are afraid the lower court's view that Exts. C and Cl stand in the way of the question of adjustment being reagitated has to be upheld in spite of our pronounced opinion that the assignment of the decree and the attempt of the assignee to execute the decree for the whole amount is a sheer abuse of the process of the court.

The appeal is hence dismissed, but without costs.

Sd/- K.P. Koshi, C.J.,

Sd/- P.D. Mandam Menon, J.

18-10-1955.

(True Copy).

Compared by  
W. A. Pili

W. A. Pili  
Dy. Registrar,  
for Registrar.

AM/17-xi-55.

A.S. No. 19 of 1954.

Copy of Judgment.